

WHY STATES SHOULD ADOPT THE UNIFORM TRUST CODE

The law governing trusts is fundamentally American common law. A few states have attempted to codify the law of trusts. Drawing from common law sources and existing statutory law, the Uniform Trust Code (2000) is a national codification of the law of trusts. While it is a codification of existing law, the Uniform Trust Code also contains reforms to meet modern needs.

The Uniform Trust Code (UTC) contains a set of basic default rules that govern voluntary trusts. The code is divided into 11 articles containing important provisions every state should adopt, including the following:

- ⇒ **Representation in transactions or proceedings relating to a trust.** There are certain specialized agency rules. For example, a minor, incapacitated person, unborn individual, or person whose identity is not known may be represented by someone who has a substantially identical interest with respect to the particular question or dispute.
- ⇒ **Creation of a trust.** A trust instrument is not necessary to create a trust; oral trusts are allowed. Also, the UTC allows for the creation of honorary trusts with limited lives for pets or a non-charitable purpose, which are generally not allowed under the common law of trusts.
- ⇒ **Charitable trusts expressly recognized.** The UTC expressly recognizes that charitable trusts can be created.
- ⇒ **Creditor claims.** The UTC sets out rules and restrictions on the ways to deal with creditor's claims against the interests of a beneficiary or settlor.
- ⇒ **Spendthrift provision recognized.** A spendthrift provision is created by general reference to "spendthrift trust" in the trust instrument.
- ⇒ **Revocable trusts.** The UTC recognizes revocable trusts, a form of trust generally viewed as a will substitute. They are the most popular, modern trust form for estate planning. *While a settlor of a revocable trust lives and has capacity, the trustee owes his or her duties to the settlor.*
- ⇒ **Office of the trustee.** The acceptance of the trust by the trustee, bond for the trustee, decision-making by co-trustees, compensation of the trustee, and similar matters are governed by rules provided in the UTC.
- ⇒ **Removal of trustee.** Upon request to the court by the settlor, co-trustee, beneficiary, or on the court's own initiative, a trustee may be removed. The grounds for removal include breach of trust, lack of cooperation among co-trustees substantially impairing the administration of the trust, as well as other factors that make removal of the trustee in the best interests of the beneficiaries.

- ⇒ **Trustee's duties and powers.** The UTC articulates some of the basic fiduciary obligations of a trustee to a beneficiary, such as the trustee's duty of loyalty, duty of impartiality, and obligation of prudent administration. A trustee may delegate certain powers; this delegation generally has not been permitted under common law.
- ⇒ **Liability.** A breach of duty to a beneficiary may lead the court to compel performance by the trustee or to suspend or remove the trustee. The available damages put the beneficiary in the position he or she would have been if there had been no breach.

UNIFORMITY

The Uniform Trust Code provides uniformity of law, necessary in the area of trust law. The use of trusts continues to grow, and the Uniform Trust Code is the first effort at true national codification of trust law. It allows states to specify the various rules of trusts with precision and provides individuals with a readily available source on trust law in their state. The Uniform Trust Code provides the necessary provisions to meet modern needs of trusts. It is important for every state to adopt the Uniform Trust Code.